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IN this number we publish the first part of an essay by Mr. SAMUEL WILLISTON, which gained the prize offered last year by the Harvard Law School Association. This prize bids fair to become an annual affair, at least for several years to come, for at the last dinner of the Association Mr. Charles C. Beaman very generously promised one hundred dollars a year for five years to be thus expended. In another way, also, the benefits of the Association have become apparent. This year, for the first time, the course in Constitutional Law has been raised to a full course, two hours a week throughout the academic year. It is thus needless to point out the practical usefulness of the Association. Although it contains already over eight hundred of the past members of the School, its numbers ought to be still further increased, for an organization of this kind, composed of men who are familiar with the methods of the School, and have a sincere appreciation of them, cannot fail to have a strong influence on the School, and through it on legal education generally.

WE have received the circulars which the secretaries of the two classes that were last graduated from the School have just issued. These classes organized at the suggestion of the secretary of the Harvard Law School Association, and the circulars are appeals for aid in furtherance of the purpose to keep some record of the members of our School. All who have ever been connected with either class belong, *ipso facto*, to the class organization. The duty of the secretary is to collect information about the members and to issue periodical reports, giving the address of each man and containing a short account of his career. All members are urged to keep in communication with their secretary, giving him such information about themselves as would be interesting to their class. The addresses of the secretaries are as follows: Joseph Henry Beale, 5 Tremont Street, Boston; Bancroft Gherardi Davis, 23 Court Street, Boston.

THE case of *The Bernina* (under the name of *Mills* v. *Armstrong*, 57 L. J. Rep. Q. B. 65) has now been finally settled by a unanimous decision of the House of Lords affirming the decision of the Court of Appeal made last year. The case was originally assigned to Mr. Justice Butt (11 P. D. 31), whose division of the court generally administered admiralty law, who, however, held that the case should be decided on common-law principles. The action was to recover under Lord Campbell's Act for loss of life in a collision at sea, brought about by the fault of both vessels, whereby an engineer and passenger on one of them, who were not at all responsible for the accident, were drowned. The question was, whether negligence should be imputed to them so as to bar an action by their representatives. On the authority of *Thorogood* v. *Bryan*, 8 C. B. 115, Mr. Justice Butt held the action barred. The Court of Appeal, 12 P. Div. 58, reversed the decision, thus overruling *Thorogood* v. *Bryan*. There was some curiosity to see how the House of Lords would treat the case when it came before them, since Lord Bramwell had, as Baron Bramwell, in times gone by, let fall observations in support of *Thorogood* v. *Bryan*. He did not shrink, however, from the issue, pronouncing an unequivocal judgment against the proposition for which that case is cited, which is, that a passenger has imputed to him the negligence of the driver of the vehicle in which he is. Lord Bramwell remarked, however, that he thought that *Thorogood* v. *Bryan* was decided correctly upon the pleadings.

A CASE of much interest (*Bond* v. *Kilvery*) was decided last spring in Chicago by Judge Tuley, of the Circuit Court of Cook County, who furnished the "Chicago Legal News," of May 19, with an abstract of his oral opinion, from which the following selections are made: —

"One James Washington was a slave of Col. Thomas Marshall, in Kentucky. He cohabited with a slave woman on a neighboring plantation, whom he called his wife, and they were known as husband and wife, after the custom of slave unions. No marriage ceremony of any kind was ever performed. The result of the cohabitation was one child, the deceased testatrix, who died without issue. In 1832 the father escaped from slavery, went to Ohio, where he married another wife, the slave woman being dead. The facts shown raise the single question, whether or not there could be a common-law marriage between slaves by the slavery laws of Kentucky, as they existed prior to 1832.

"As I understand the law applicable to persons so held in slavery, they could not enter into any legal contract, not even that of marriage. The common law regards marriage as a civil contract. In some of the States the slaves were classed as chattels, and in others as chattels real. Being without legal capacity to contract, there could be no such thing as a common-law marriage between slaves."

Judge Albion W. Tourgee has criticised this view in the "Inter-Ocean," of May 15. He says that "it is not so certain that the law will not hold this relation between slaves, for the purpose of inheritance, to have been the equivalent of a common-law marriage between whites"; and he doubts whether a State has a right to say that a man shall not marry and have heirs.

A VERY interesting discussion has been running through the late numbers of the "American Law Register," on the relation of law schools

to legal education. Mr. Henry Budd began it in the February number of this year. He accused the schools of being instrumental in shortening the time necessary for preparation for the bar, and, more than that, of failing to give the thorough mental training and the ability to handle legal questions which, he maintains, used to be obtained under the old system of apprenticeship in a lawyer's office. To this attack Prof. H. W. Rogers, of the Michigan University Law School, replied in the June number, and was in turn met by another article from Mr. Budd in July. Rather aside from this discussion, but suggested by it, is a good description, also in the July number, of the case system of instruction as used in this school, written by Mr. Sidney G. Fisher.

Sure and rapid progress in legal thought can come only when lawyers enter the bar with trained minds, with a broad knowledge of law as a science, and with the highest ideals as to their duties. Therefore it behooves all who enter the profession to point out the way, so far as they can, by which this result shall be attained. Among the many experiments that have been made in this field, that of the Harvard Law School is certainly not the least important; but it is very disappointing to see the ignorance which prevails among lawyers as to the scope and success of that experiment. Thus Mr. Budd says that "ordinary law schools" give "only sixteen months of actual instruction" and have no requirements for entrance. To be sure. he says that "there may be exceptions to the rule"; but he seems to imply that he knows of none. The Harvard School, however, ever since 1877 has required all candidates for a degree who are not college graduates to pass examinations in Latin and in "Blackstone's Commentaries," insisting that the papers be written with correct spelling, punctuation, grammar, and expression, and has lengthened the course to three years. Still more discouraging is the ignorance of our methods of study, such as was displayed by even so eminent a writer as Mr. Joel Prentiss Bishop in the January-February number of the "American Law Review."

The difference between the lecture system of instruction and the case system lies, not in the presence or absence of text-books or reports from the student's working library, as Mr. Bishop implies, but in the use to which the books are applied. In the lecture system, the teacher prepares his lectures by original investigation, making his own analyses of the cases. The result of his studies he gives to his hearers in such form as he thinks best, referring to the cases as authorities. It is safe to say that in nine cases out of ten the cases are not looked up by the student, so that his only effort is that of trying to understand and remember what he has heard. Of course that effort is considerable; but still from it the student has not received the benefit that his teacher received from the preliminary studies, because he has not had the intellectual exercise of extracting principles from cases and then stating them. In the case system, the cases are given out before the lecture. The student is then required to state them to the professor, indicating at the same time whether or not he agrees with the decision. Class discussion ensues, guided and controlled by the teacher. By this method the great principles of the common law are extracted from the authorities, not by the professor for the student, but by the student for himself under the guidance of the professor. Thus is ensured a regular and orderly study, which for the student has all the freshness and exhilaration of original investigation. Indeed, it

requires great care on the part of the professor to prevent the students in their eagerness from carrying the discussion into too great detail, and so from wandering from the main points. To the value of such a training all will bear witness who have ever experienced it. Not the least advantage of such a system are the pleasant and cordial relations established between teacher and pupil.

The Harvard Law School is no longer an experiment, — it is an assured success, and its methods deserve to be carefully studied by all who have the cause of legal education at heart.

THE LAW SCHOOL.

CLUB COURTS.

SUPERIOR COURT OF THE AMES-GRAY.

Grain Elevator Cases. — Doctrine of Tenancy in Common in Sales from a Bulk. — Intention.

A warehouseman being the owner of wheat in bulk sold a portion, giving the buyer a sold note and a warehouse receipt. The buyer having become insolvent before any appropriation of the wheat was made, the warehouseman refused to deliver on the application of the buyer's assignee. — Trover.

The intention of the parties at the time of the making of the bargain was clearly that a property in the flour should pass. This was evidenced by the giving of the warehouse receipt, and by the payment thereunder of warehouse dues. If we follow the English law, which holds that separation is necessary in order that there should be any sale, we necessarily defeat this intention; and where, as in a case like the present, there can be no advantage from the privilege of separation or selection, it does not seem that such a rule should be applied.

It conforms as nearly as may be with the intention of the parties to say that the buyer, in such a case as this, purchases a proportionate interest in the whole bulk, and that he thereby becomes a tenant in common with the seller. It has, however, been strenuously objected to the application of this doctrine that the parties did not intend to become tenants in common when they entered into the contract. It is true they may not have had this exact intention, but they certainly did intend that the flour should belong to the buyer. The prime thing for the law to look at is the intention of the parties in regard to the ultimate result of the transaction, and not what they may have intended to be the means of reaching that result. If the ultimate result can only be reached by one legal method, it would seem better that the courts should not concern themselves with the question whether or not the parties intended that that method should be employed.[1] *Judgment for the plaintiff.*[2]

1 *Chapman* v. *Shepard*, 39 Conn. 413, 425.

2 The earliest cases in which this doctrine of tenancy in common was applied were *Kimberly* v. *Patchin*, 19 N.Y. 330, and *Pleasants* v. *Pendleton*, 6 Rand. (Va.) 473. Among the recent cases following *Kimberly* v. *Patchin* are *Newhall* v. *Langdon*, 39 O St. 87; *Gray* v. *Holland*, 37 Ark. 483; *Phillips* v. *Moor*, 71 Me. 78; *Russell* v. *Carrington*, 42 N.Y. 118; *Chapman* v. *Shepard*, 39 Conn. 413; *Watt* v. *Hendry*, 13 Fla. 523; *Smith* v. *Friend*, 15 Cal. 124; *Hurff* v. *Hires*, 40 N. J. L. 581; *Bank* v. *Hibbard*, 48 Mich. 118; *Hoffman* v. *King*, 58 Wis. 314; *Grimes* v. *Cannell*, 36 N.W. Rep. 479 (Neb.) Some recent cases are, however, *contra*: 90 Ind. 268 : 64 Tex. 218; 59 N.H. 487; 14 Bush (Ky.), 555; 42 Ala. 484; 51 Pa. St. 66; and 11 Iowa, 32.
See "Grain Elevators," 6 Am. Law Rev. 450.